



## RAVALLI COUNTY ATTORNEY

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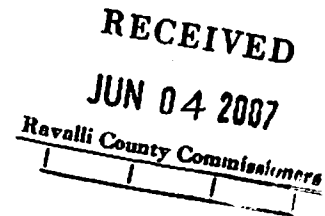
### MEMO

**TO:** Morgan Farrell, Environmental Health

**CC:** Ravalli County Commissioners  
Karen Hughes, Planning  
Regina Plettenberg, Clerk & Recorder

**FROM:** George Corn *GC*

**DATE:** June 1, 2007



**RE:** Request for DEQ exemption for proposed condominium project

Dear Morgan:

The Commissioners requested our advice regarding the proper procedure for DEQ review of the Sanitation in Subdivision Exemption Application submitted April 12, 2007, for the proposed Elk Mountain Ranch condominium project. Specifically, you requested clarification regarding 1) whether the 20 acre exemption from DEQ review applies to condominiums; and 2) how any necessary sanitation review should be coordinated with planning and/or zoning review on proposed condominium projects.

As you are aware from Clerk & Recorder Regina Plettenberg, the developers of the Elk Mountain Ranch condominium project, which proposes 45 separate, single-family "units" on less than 2 acres, have filed a preliminary declaration with the Clerk's Office. Their counsel has also communicated directly with our office, requesting a meeting to discuss proper procedure for condominium project review. Our office will soon be scheduling a meeting with your department, as well as the Planning Office, Clerk & Recorder and Commissioners, to ensure we have an established and coordinated review process for condominium projects in Ravalli County.

In the meantime, please be aware that, according to the Clerk & Recorder's current established procedure, any proposed condominium projects must undergo review by Planning and Environmental Health before final declarations are recorded. This ensures that the project either complies or is exempt from subdivision review, and further ensures that proposed sanitation for the project is feasible before units are sold.

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In regard to specific review by Environmental Health, you have correctly noted that §76-4-101 *et seq.* governs Sanitation in Subdivisions. For purposes of that chapter, a subdivision includes condominiums per the express language of §76-4-102(16). Sanitation review is required for all condominiums, including those that fall outside subdivision review, due to the concern regarding water supply, sewage disposal, and solid waste disposal logically arising from such high density development. A prior Attorney General's Opinion has expressly held that sanitation review of condominiums includes those to be constructed on parcels of land containing more than 20 acres. Therefore, the 20 acre exemption is not available to proposed condominium projects under current Montana law.

The sanitation review exemptions available for condominium projects are set forth in §76-4-111, MCA. Under the statute, condominiums are only exempt from sanitation review if they have already complied with the Subdivision Act or been previously approved for the given number of units by state or local health departments. In those cases, the owner should easily be able to obtain documentation of such prior approval from the appropriate department(s).

In regard to the Elk Mountain Ranch condominium project, correspondence indicates that neither of the exemptions in §76-4-111 apply. Thus, the developers will need to undergo review before proceeding. Alex is going to call the attorney involved in this matter and explain the County's current process for condominium review; in the meantime, their exemption application should be denied.

Morgan, although individuals seeking to proceed with condominium projects are understandably anxious to proceed as soon as possible, keep in mind that you have a mandatory duty, imposed by the legislature, to protect the quality and potability of water for domestic and other beneficial uses in Ravalli County. Because such review extends to condominium projects, you should modify your forms to make sure you are aware when a condominium project is proposed on a division of land that may otherwise be an exemption from DEQ or local review. Otherwise, continue to follow your established procedures that require review by all necessary departments, as well as compliance with the relevant statutes and regulations.

Thanks for bringing this issue promptly to our attention.